



Land Use and Zoning Meeting Minutes

September 24, 2014

STAFF:	David Radachy
DATE:	September 25, 2014

The Land Use and Zoning Committee hereby finds and determines that all formal actions were taken in an open meeting and that all deliberations of the Land Use and Zoning Committee, which resulted in formal action, were taken in a meeting open to the general public, in full compliance with applicable legal requirements of Section 121.22 of the Ohio Revised Code.

The meeting was called to order at 6:30 p.m.

Attendance was taken by sign-in sheet. The following members were present: Messrs. Constantine, Falcone, Kenyon, Klco, and Welch and Ms. Diak. Staff: David Radachy. Guest: Mr. Ivan Valentic

Mr. Radachy introduced Ivan Valentic to the committee and said that he will become part of the committee after the Planning Commission Meeting. Mr. Valentic will be replacing Mr. Hanford, who asked not to be re-appointed.

Mr. Radachy stated that there are three cases this evening. One from Madison Township and two from Painesville Township.

Madison Township – Text Amendments: Section 101, Definitions, Section 103, Compliance with Regulations

Staff stated that Madison Township was adding Junk Motor Vehicle definition of "A motor vehicle that meets all of the following criteria: Three model years old or older, Apparently inoperable and extensively damaged, including but not limited to, any of the following: missing tires, engine or transmission. This was the definition of junk motor vehicle from ORC 505.173

Staff also stated that they were adding Personal Property Sales definition: All general sales, open to the public, conducted from or on land that is residentially used for the purpose of disposing of personal property. Included, but not limited to all sales entitled "garage", "yard", "estate", or "moving". This definition came from Leroy Township.

Madison Township is proposing to change the time period in Section 103.7 from allowing an unlicensed, inoperable or junk vehicle on private property from 45 days to 14 days. They are also adding regulations to limit personal property sales to lots with homes on it, limiting property owners to only three per year, regulating the time period a sale can take place and regulating the location of signs. Staff stated that they provided the definitions to Madison Township and they help write the regulations.

Staff stated there has been some issues with unlicensed vehicles and with garage sales. These regulations will help the Township Zoning Inspector enforce issues. Mr. Klco stated that these regulations were needed because of couple of people in the community. Staff recommended approval.

Mr. Klco made a motion to accept staff recommendation to recommend approval of the text amendment.

Mr. Constantine seconded the motion.

All voted "Aye".

Motion passed.

Painesville Township – Text Amendments: Sections 5, Definitions, 9, Board of Zoning Appeals, 17.05(A)(2), Multi-Family Development Access and 32.07, FPUD Access.

Staff stated that Painesville Township was adding a definition of access driveway, which was "a single access driveway consisting of at least one ingress and at least one egress lane which may run adjacent to each other or may be split off to create a decorative entryway."

Mr. Constantine stated that Painesville Township was trying to define that an access driveway was one ingress and one egress because they were getting inpretations of the definition of right turn egress and left turn egress and two lanes ingress were four access drives. They were trying to eliminate this issue. The committee understood the limitations that the definition was creating. They agreed with staff in regards to the creating a simple definition of access drive.

They were also modifying the swimming pool and hot tub definitions. Hot tub was altered by removing the language "a diameter less than six feet and electrical connections" and "see also "PERMANENT SWIMMING POOL" and adding language stating hot tubs will permitted under the category of permanent swimming pool and must demonstrate the ability to deny access. Swimming pool, temporary was changed by removing the term swimming and adding wading and/or splashing purposes was added to the definition. Swimming Pool, Permanent had the biggest changes. "Intended for recreational swimming purposes and lot located within an enclosed building, with a diameter greater than six feet" and "permanent swimming pools, as regulated in this Zoning Resolution, shall be erected and maintained on a property year round" were removed from the definition.

Painesville Township added requirements for membership for the Board of Zoning Appeals. They are now requiring members to live in the unincorporated and zoned areas of Painesville Township. They are stating that the member will sit on the board until a new member is appointed. They also are invoking the section of ORC that allows them to appoint alternates for the BZA and the duties of the alternates. The new language also allows them to remove members and how to fill the spots in case of vacancies. Painesville Township created a new section 9.02 which states the duties of the BZA. These duties were taken directly from ORC 519.14 and membership came from ORC 519.13.

Staff stated that revised section 9.01 does not address that the term of member is five years and their terms expire on December 31 and it does not state a term for the alternate members. Staff found revised section 9.01 not very easy to read and found it difficult to find information. Staff noted that the revised section 9.01 does not discuss officers, chair, vice chair and secretary and it does not state that the BZA needs to take minutes or hold records.

Staff stated that section 17.05(A)(2) and 32.07 are creating access requirements for developments in R-4 and FPUD. In both cases they are required to have two access drives that are fifty feet apart.

Staff stated that he had several issues with revising the definitions of pools and hot tubs. He stated that the electrical connection is an important factor in differentiating a hot tub from a kids' pool. He also state there are companies that rent large, Olympic size or deep pools that you can swim in. It is not as common in the United States as it is in England. There are companies that will bring in pools and set them in gyms or parking lots and teach children to swim. Staff showed several pictures of this type of pool. By changing the definition, you would require someone like Riverside High School to adhere to the zoning regulations and get a permit if they wanted to rent a pool for their swim team to practice in for the swim season.

Staff brought up several issues with the access driveway definition change. Section 29 allows for one way driveways through a parking lot. It is not uncommon to have one entrance driveway and 150 feet down the street, have an exit driveway. Eastlake Walmart is like that. Staff mentioned that the Township and the County do not have access management regulations. ODOT does have access management for state and US highways and they will make the decision on access points for those roads. They may not adhere to your requirements.

Staff recommended leaving swimming in the definition of temporary pools and create a definition of wading pool as being a pool having a diameter of less than 6 feet and depth of 2 feet or less. This way they could allow temporary pools without a permit.

Mr. Constantine stated that the intent of the Painesville Township Zoning Commission is to administer pools all the same. They don't care that the pool can be taken down and moved. Staff asked if the Township was worried about safety? Mr. Constantine stated that was a concern. The Committee got into a discussion that some of the newer pools are made with PVC pipe and look just like an old above ground pool and marketed as temporary pools. Maybe it was best to administer them all the same. The Committee thought it best to create a definition of swimming pool, hot tub and wading pool and require permits for swimming pools and hot tubs regardless if they are temporary or permanent.

The Committee understood the Townships desires about administering swimming pools. They felt the following definitions would work best in their quest:

HOT TUB: A permanent or semi-permanent structure located either above grade or below grade, designed to contain at least two feet of water at any one point with, but not including temporary metal, plastic, fiberglass or inflatable structures intended to be used as **wading** pools by children. **Hot tubs will be permitted under the category of Permanent Swimming Pool and must demonstrate the ability to deny Access when not in use.**

WADING POOL: An above ground tank or structure designed for **wading and/or splashing purposes** but which are not permanently installed. **Wading** pools shall include, but shall not be limited to, inflatable, blow-up, plastic structures intended to be used as pools by children.

SWIMMING POOL: An artificial tank or structure, either in-ground or above-ground, intended for recreational swimming purposes and designed to contain greater than two (2) feet of water at any point.

Staff suggested using a simple definition of access driveway as a point providing ingress or egress to or from a property to a public right-of-way and removing the language requiring access having ingress lane adjacent to or within 50 feet of the egress lane. They suggested not requiring two access points for R-4 and FPUD. They recommend adding language that states that all developments shall be designed for proper traffic circulation and emergency vehicle access. This would allow you to use other regulations to get the two access points if necessary. It will also not create conflict between their zoning regulations and the Lake County Subdivision Regulations.

Staff mentioned that the regulations may not solve the problem that Painesville Township has been experiencing with access driveways. The proposed regulations on having two access points to public right-of-way does not forbid the access drives connecting together 100 feet into the property, forming one access drive. It does not fix the issue of moving vehicles out of the development if the main access drive is blocked.

Staff is concerned that this regulation would contradict the Ohio Fire Code which requires two separate and approved fire access roads for developments of 100 multi-family units or more or 30 single family or duplex units. Section 17.05(A)(2) does not meet this requirement. They also expressed a concern about the Lake County Subdivision Regulations interacting with this regulation. Subdivision regulations regulate location of streets and zoning regulations regulate uses and density. The proposed regulations on having two access points to a public right-of-way for FPUD development conflicts with the Lake County Subdivision Regulations. The Lake County Subdivision Regulations require 500 feet between a public rights-of-way connecting to an existing right-of-way. A developer proposing a subdivision utilizing the FPUD may not meet your regulation of having two connections to the main road because they would need a lot with a width of 620 feet. The Committee discussed the interaction of the Township and the County in regards to subdivisions. They asked about width of right-of-way and what is installed in a right-of-way. They discussed access management and how that works.

Please consider the following for the BZA; it revised language staff wrote for the Madison Township Zoning Commission:

9.01 BOARD OF ZONING APPEALS ESTABLISHED: The Zoning Commission is hereby created in accordance with ORC 519.13.

9.02 DUTIES AND POWERS: The Zoning Commission shall have the following duties and powers:

- 9.02.1 Hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of sections [519.02](#) to [519.25](#) of the Revised Code, or of any resolution adopted pursuant thereto;
- 9.02.2 Authorize, upon appeal, in specific cases, such variance from the terms of the zoning resolution as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the resolution will result in unnecessary hardship, and so that the spirit of the resolution shall be observed and substantial justice done;
- 9.02.3 Grant conditional zoning certificates for the use of land, buildings, or other structures if such certificates for specific uses are provided for in the zoning resolution. If the board considers conditional zoning certificates for activities that are permitted and regulated under Chapter

1514 of the Revised Code or activities that are related to making finished aggregate products, the board shall proceed in accordance with section [519.141](#) of the Revised Code.

- 9.02.4 Revoke an authorized variance or conditional zoning certificate granted for the extraction of minerals, if any condition of the variance or certificate is violated.

The board shall notify the holder of the variance or certificate by certified mail of its intent to revoke the variance or certificate under division (D) of this section and of the holder's right to a hearing before the board, within thirty days of the mailing of the notice, if the holder so requests. If the holder requests a hearing, the board shall set a time and place for the hearing and notify the holder. At the hearing, the holder may appear in person, by the holder's attorney, or by another representative, or the holder may present the holder's position in writing. The holder may present evidence and examine witnesses appearing for or against the holder. If no hearing is requested, the board may revoke the variance or certificate without a hearing. The authority to revoke a variance or certificate is in addition to any other means of zoning enforcement provided by law.

In exercising the above-mentioned powers, the board may, in conformity with such sections, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and may make such order, requirement, decision, or determination as ought to be made, and to that end has all powers of the officer from whom the appeal is taken.

9.03 MEMBERSHIP:

- 9.03.01 Members: In accordance with ORC 519.13, Board of Zoning shall consist of five (5) members to be appointed by the Board of Township Trustees, each for a term of five (5) years and so arranged that the term of one member expires each year. Each member shall be a resident of the unincorporated, zoned areas of Painesville Township, Lake County, Ohio.

- 9.03.02 Alternates: In accordance with ORC 519.13, the Board of Township Trustees shall also appoint two alternates to serve one year terms from January 1 to December 31. Each alternate member shall be a resident of the unincorporated, zoned areas of Painesville Township, Lake County, Ohio. An alternate member shall take the place of an absent member and may vote on any matter on which the absent member is authorized to vote.

- 9.03.03 Vacancies: Vacancies shall be filled by appointment by the Board of Township Trustees. The new member will finish the unexpired term and may be appointed to their own full term when the unexpired term is completed.

- 9.03.04 Leadership: The Board of Zoning Appeals by majority vote of its members shall elect a chair, vice-chair, and secretary, who shall occupy such offices until their successors are duly elected at the annual meeting of the Zoning Commission, which shall be their first meeting of the calendar year.

9.04 MEETING, PUBLIC HEARINGS AND RECORDS

- 9.04.1 Meeting Schedule: The Board of Zoning Appeals, with consultation from the Board of Township Trustees, shall set their meeting schedule for the year at their annual meeting.

- 9.04.2 Notice: Meetings and public hearings will be open to the general public. Meeting notice and meetings will be in full compliance with applicable legal requirements of Section 121.22 of the Ohio Revised Code.
- 9.04.3 Quorum: Three members of the Board of Zoning Appeals shall constitute a quorum.
- 9.04.4 Call to order: Meetings and Public Hearings shall be held at the call of the Chair or by the Vice-Chair in their absence. If both officers are not present, then the Secretary may call the meeting to order and request a chair pro-tem be elected per Robert's Rules of Order.
- 9.04.5 Agenda: The agenda for the Board of Zoning Appeals Meetings will be set by the Secretary of Board of Zoning Appeals in accordance to rules adopted by the Board of Zoning Appeals at their annual meeting.
- 9.04.6 Public Comment: Rules for public comment for the Board of Zoning Appeals Meetings and Public Hearing will be set by the Board of Zoning Appeals at their annual meeting.
- 9.04.7 Rules for the setting of the agenda and for public comment may be suspended by the Board of Zoning Appeals if, in their judgment, it would expedite the functioning of the Board of Zoning Appeals, or relieve unnecessary inconvenience or hardship.
- 9.04.8 RECORDS: The Board of Zoning Appeals shall keep any records pertaining to appeals, conditional uses, variances and revoking of variances or conditional uses. The Board of Zoning Appeals shall keep minutes of its proceedings, showing the vote of each member or alternate member upon each question, or if absent or failing to vote, indication of such fact, and shall keep records of its examinations and other official actions, all of which is public record and be immediately filed at the Township Hall. Any minutes pertaining to executive session are exempt from these rules. Any communication between legal counsel and the Board of Zoning Appeals are exempt from these rules.

Mr. Kenyon made the motion to accept the staff recommendation to recommend approval of the text amendment with staff recommendations on the definition of access drive, staff changes to 17.05(A)(2) and 32.07 and the changes to section 9 and committee's definition of swimming pool, wading pool and hot tub.

Ms. Diak seconded the motion.

All voted "Aye".

Motion passed.

Painesville Township – Text Amendments: Section 32.17B

Staff stated an applicant was proposing to add a sentence that allows the Board of Township Trustees to approve an application for rezoning to FPU District of a PDP (Preliminary Development Plan) that does not conform to the regulations and restrictions of Section XXXII of the Painesville Township Zoning Resolution, including without limitations, subsection 32.04 (Specific Requirements), 32.05 (A) (Density of four units per acre), 32.06 (A) (Minimum 20% open space), 32.07 (Lot Width), 32.08(B) (setback from the ROW for the sideline of a corner lot), 32.09 (A) (Buffer of 35 feet along the side and rear lines), 32.09 (B) (distances between buildings) and 32.11 (B) (accessory structure requirements), if

it determines, following the recommendation of the Zoning Commission, that nonconformity to such requirements will produce a more harmonious development. Any application for rezoning to FPUD District with PDP that does not conform to such requirements shall include an explanation for the failure.

Staff stated that the proposed change would allow the Trustees to approve nonconformities to a development with a recommendation of the Zoning Commission based on the fact that it would produce a more harmonious development and an explanation of the failure is given by the developer. Staff felt that this was a variance.

It was noted that the change would allow the Board of Trustees to approve developments that do not meet the following criteria from Section 32.04:

- Having 250 feet of frontage and five acres of land. This has been a requirement since the creation of FPUD in 1997.
- Having 20% open space. The original requirement was 15%.
- Having to have a site that is served by central water and sanitary sewer service.
- Providing other utility facilities and easements for gas, storm sewer and storm detention, electrical, telephone and cable.
- The roads being required to meet Lake County Standards, including requiring cul-de-sacs to have a diameter of 100 feet.
- Walkways being required to be constructed of hard surface.
- Lot widths for fee simple lots of 60 feet on right-of-way and 40.98 feet and 60 feet at the building setback line for lots fronting on a cul-de-sac. The original FPUD did not have a minimum lot size. Lot widths were varied to allow for a variety of structural designs.
- Maximum building height of 35 feet or for lakefront or other developments with unique characteristics, a height of 50 feet may be allowed.
- Building setback of 30 feet from the right-of-way for new fee simple lots. This has been a requirement since the creation of FPUD in 1997.
- Final plats, deed restrictions and/or all other pertinent documents applicable to the FPUD are to be filed with the Township Zoning Inspector (except for paperwork that falls under the jurisdiction of the Lake County Subdivision Regulations).

The change would allow the Board of Trustees to approve developments that do not conform to Section 32.05 (A), maximum density of 4 units per net acreage (land remaining after deducting open space from the gross acreage). The original FPUD had a density of 6 units per acre. It would allow the Board of Trustees to approve developments that do not conform to section 32.06 (A), which requires developments to provide 20% of the gross acreage (excluding rights-of-way, riparian corridors and public utility easements) as open space. The original requirement was 15% and only excluding rights-of-way.

Staff stated that the change would allow the Board of Trustees to approve developments that do not conform to Section 32.07, which requires a lot to have 250 feet of frontage in order for a FPUD to be allowed on the lot. This was part of the original regulations. This Section also requires a minimum of two access driveways at least 50 feet apart and connected to one or more public roads. This was added in 1999. It would allow the Board of Trustees to approve developments that do not conform to section 32.08 (B), which would allow developers to have side front setback of 30 feet on existing rights-of-way instead of 50 feet. This was part of the original regulations. The distance between buildings that is stated in section 32.09 (B) could be waived. This would allow the trustees to approve

buildings that have less than 20 feet side by side, 45 feet back to back and 40 feet side to back. The change would allow the Board of Trustees to approve developments that do not conform to section 32.11 (B). This would allow the trustees to approve accessory structures and buildings that have rear yard clearances of less than 3 feet and building heights greater than 12 feet.

Staff stated that the PUD regulations in ORC 519.021 encourages the efficient use of land and resources, promoting greater efficiency in providing public and utility services, and encouraging innovation in development. But the way this is written, it gives the Trustees the power to vary regulations, which is not allowed per ORC 519.14. Only the Board Zoning Appeals has the ability to approve variances to zoning regulations.

It was noted that a PUD is meant to be flexible and staff stated that there was a proper exception written into 32.04 I. That section allows for a maximum building height of 35 feet unless it is on Lake Erie or there is other unique characteristics, then the building height can go to 50 feet. There is no gray area on how to obtain greater height.

The Committee asked why the developer went in this direction. Mr. Constantine and Mr. Radachy did not know why. Mr. Constantine stated that there are four types of PUDS listed in ORC 519.021. One of them was the developer creating their own PUD that would be a district change on their lot alone. He was expecting the developer to file that type. But he did not.

The Committee discussed if and how the BZA could get involved in the PUD process. On some of the requirements listed in the Painesville Township Zoning Resolution, the Zoning Inspector could review the proposed PUD and determine that they don't meet requirements like 250 feet of frontage or five acres, deny accepting the plan and have the developer ask for a variance before the developer goes before the Zoning Commission.

Staff recommended that this Section not be accepted as written. It may be an unlawful delegation of authority. ORC 519.14 grants the authority to grant variances to the Board of Zoning Appeals, not to the Board of Township Trustees. They felt that this may cause issues in the future. There are no standards for the Township to review developments. This may allow the Board of Township Trustees to act capriciously or be accused of acting capriciously in their decisions on the developments. This may cause legal issues for a township in the future.

Staff stated that ORC 519.021 allows a township to develop regulations that are not uniform. This means that there does not need to be a minimum lot size of frontage and the plans can be approved on a case by case basis based on a site plan. The regulations would need to be written in such a way that would allow for more flexibility than this developer wishes the Township to have.

Mr. Klco made a motion to accept staff recommendation to recommend denial of the text amendment.

Ms. Diak seconded the motion.

All voted "Aye".

Motion passed.

Staff stated that the re-appointing of members from Concord Township and Painesville Township will be on the next agenda of the Planning Commission. There was no Planning Commission in August. That is why they have not re-appointed yet.

There was no public comment.

The meeting adjourned at 7:40 PM.